

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**VICTOR MONTAGNE**

**Plaintiff,**

**vs.**

**THE HOME DEPOT, INC., and  
John Doe, an Illinois Resident,  
Defendant.**

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**Case No.: 08 C 611  
Hon. Judge Darrah**

**PLAINTIFF'S PETITION TO REMAND**

Plaintiff, VICTOR MONTAGNE, by his attorneys, BAAL & O'CONNOR, moves this Court to remand this matter to the Circuit Court of Cook County. In support of this petition, Plaintiff states:

1. On September 27, 2007, Plaintiff filed a premises liability action against Home Depot, Inc., (hereinafter "Home Depot").
2. Among the allegations in the original complaint at law, Plaintiff alleged, in part, (6) that defendant's employee caused a wood plant to fall from the rack of pallet, striking Plaintiff in the face and head, causing serious injuries.
3. Since discovery has not taken place yet, Plaintiff did not know the name of the Home Depot employee; therefore Plaintiff did not name this employee, an Illinois Resident in the original complaint.<sup>1</sup>
4. On January 28, 2008, Jennifer Knobloch, one of Plaintiff's attorneys, contacted the Defendant's office and spoke to attorney Jason Friedl. At that time, Ms. Knobloch informed Mr. Friedl that she was going to ask the Circuit Court of Cook

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<sup>1</sup> See Complaint at Law, attached hereto and incorporated by reference as Exhibit "A."

County by oral motion the next day, January 29, 2008, for leave to file First Amended Complaint adding "John Doe, Illinois Resident" as a party-defendant. After Ms. Knobloch informed Mr. Friedl of this, he then stated he filed a motion for removal (although it was clearly not sent to Plaintiff as it was not stamp-filed until approximately 3:00 p.m. on January 28, 2008.)

5. On January 29, 2008, the Circuit Court granted Plaintiff leave to file the First Amended Complaint, adding the defendant employee, an Illinois Resident, who is alleged to directly have caused the board to fall on the Plaintiff in this case.<sup>2</sup>

6. Defendant removed this matter to this Honorable Court because, according to Defendant, there is no claim of diversity based on the original complaint and Plaintiff's answer to Request to Admit.

7. However, this Honorable Court recently granted Plaintiff leave to file First Amended Complaint adding John Doe, an Illinois resident, as a party to this lawsuit. Plaintiff clearly has a factual basis to allege that defendant Home Depot, Inc. and its employee, an Illinois resident were negligent. Because this is an Illinois resident who has been joined in good faith as a defendant, there is no diversity. Therefore there is no federal jurisdiction under 28 U.S.C. 1332.

WHEREFORE, for the reasons stated in this Petition, Plaintiff, VICTOR MONTAGNE, moves this Court to remand this mater to the Circuit Court of Cook County.

S/ Bryan J. O'Connor Jr. \_\_\_\_\_  
Bryan J. O'Connor Jr

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<sup>2</sup> See First Amended Complaint at Law, attached hereto and incorporated herein by reference as Exhibit "B".